1947

File No. O. Wakf/47.

K

Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Kele 1915

Opinions under the Musalman Wakf Act, 1923.

P & E

File No. O. Wakf/47

Stl. Sectt. Slip 24 B e.

405-A.

C O N T E N T S.

Legal Department File No. O. Wakf /47

Serial No.	Compilation No.	Subject	Pages
		Muselman Wakf Act 1923.	
1	R. . No. 1754/13/2/47 O.No. 6372/19/6 47	Whether the course suggested by the Chief Judge to frame a rule under sec. 11 (1) providing for transfer of registration of a wakf aft is legally feasible as a way out of the difficulty.	1-2
2	O. No. 7455/19-7-47	Whether there is any case for a special representation of Shias on the Dist. Committee much less for constituting separate committees for Sunni and Shia Wakfs.	3-4
3	R.I.No. 2626/5/3/47 R.I. No. 9429/7/8/47 O.No. 9153/12/9/47	Whether salami paid to Govt. can be deducted from the gross annual income to ascertain the annual income for the purpose of rule 18 of the Bom. Wakf Rules	5-8
4	R.I. No. 9062/30/8/47 O.No. 10012/16/10/47	Whether it is necessary to issue any notification for the purpose of reducing the contribution towards the Wakf Administration Fund by Wakf in Bombay	9-10
5	O.No. 11431/29/11/47	Whether there is any objection to the payment of the compassionate gratuity out of the Wakf Administration Fund	11-16

1/5/5

Effect of the Rule.

Section 6 of the Greater Bombay Laws and the Bombay High Court (Declaration of Limits) Act, 1945 (XVII of 1946) provides that notwithstanding anything contained in this Act all proceedings pending in any court in Greater Bombay and all other proceedings of whatever nature pending before any public officer, in or in respect of any of the areas comprised in Greater Bombay, at the date of the commencement of the Act shall be disposed of by such authority as the Provincial Government may direct and in the absence of such direction any such proceeding shall be continued and disposed of as if this Act had not been passed. Under section 6D of the Mussalman Wakfs Act, 1923, the Court is entitled to register Wakfs within its jurisdiction; and under section 6F, the entries made by the Court in the Register of Wakfs and the findings recorded under section 6C shall subject to the provisions of section 6G be final for the purposes of this Act. After such registration every mutawalli is bound to keep regular accounts and get them audited(section 6H); and every registered wakf is bound to pay an annual contribution to the Wakf Administration Fund(section 6J). The words "proceedings of whatever nature" in section 6 of Bombay Act XVII of 1945 should be given a wide connotation and would include maintenance of accounts and their audit, contribution to the wakf administration fund etc. in respect of wakfs registered under section 6F of the Mussalman Wakf Act, 1923. Consequently on the direction of the Provincial Government under section 6 of the Bombay Act XVII of 1945, the proceedings in respect of wakfs in the areas mentioned in Schedule A, Part II of the Act and registered in the District Court, Thana on transfer to the Chief Judge, Small Cause Court, Bombay can be disposed of by him.

I3./ [illegible] 15/6

~~C.S.~~ Remembrancer of Legal Affairs.

U.R. to R.D. No. 6372 dated the 18th June 1947.

Office of the R.L.A.

According to the scheme of the Mussalman Wakf Act, 1923 as amended by the Bombay Act XVIII of 1935 a Wakf Committee constituted for each district is intended to advise and assist the Court in all matters relating to the registration, superintendence and control of wakfs and all wakfs, whether Sunni or Shia, are treated alike. It is true that in U.P. two separate Boards called the "Shia Central Board" and the "Sunni Central Board" are constituted and they were vested with wide statutory powers of general superintendence of all wakfs(i.e. Shia and Sunni wakfs respectively) and doing all things reasonable and necessary to ensure that wakfs or endowments under their superintendence are properly maintained, controlled and administered and duly appropriated to the purposes for which they were founded or for which they exist (see the U.P. Muslim Wakf Act, 1935). But, unlike those Central Boards the district wakf committees constituted in this Province enjoy no power of superintendence that is to say, are not vested with substantial powers. Under the Bengal Wakf Act, 1834 the Board enjous certain statutory powers regarding the allocation of the income or other property of Wakf to any particular object of the Wakf and to advise the Commissioner in the exercise and performance of his powers and duties under the Act and Shias are given special representation on the Board. It is apparent that in U.P. the number of Shia and Sunni Wakfs may have been equal while in Bengal the number of Shia Wakfs must have been considerably greater requiring special representation It appears from the reports of the District Judge and others that the number of Shia Wakfs in this Province is almost negligible. If so there is hardly any case for a special representation of Shias on the District Committees, much less for constituting separate committees for Sunni and Shia wakfs.

Wakfs.

Id./ D.V.V.

O.C. Remembrancer of Legal Affairs.

U.O. to P.D. No. 7455, dated the 19th July 1947.

Under rule 18 of the Bombay Muscalman Wakf Rules, 1936 contribution to the District Waks Administration Fund are leviable on the annual income of each wakf. The expressions "annual income" as defined in the Explanation thereto means the total amount received during the year. The word "income" appears to have been used in rule 18 otherwise than in its natural and commonly accepted sense as denoting net income. Consequently "Salami" which is paid to Government on account of the wakf property cannot be deducted from the income thereof for the purpose of assessing contribution under rule 18. The fact that such Salami is deducted from the income of the wakf property for the purpose of assessing the Income tax under the Income-tax Act, 1922 will be no valid ground for deduction thereof for assessing contribution under rule 18 for under section 9(1) of the Income-tax Act a specific provision appears to have been made for such deduction. The view taken by D.J. Surat is correct.

Id./ D.T.K. 9/5

~~D.L.A.~~

SMR.8/5/56
4 Copies.

Office of the R.L.A.

Seen and returned. The view expressed by the District Judge, Surat in his letter No. 524 dated 21st February 1947 is correct.

Id./ P.M.L. 11/9

Remembrancer of Legal Affairs.

U.R. to R.D. No. 9153 dated 12th September 1947.

Office of the P.L.A.

Reduction in Cont -ribution.

Mussalman Wakf Act, 1923.

Under clause (f 5) of section 11(2) of the Mussalman Wakf Act, 1923, Government can, after previous publication by notification in the official Gazette, make rules for the amount of contribution, the date on which and the manner in which it shall be paid and exemptions granted under section 6 I. Rule 13 of the Bombay Mussalman Wakf Rules thus made fixes the contribution to the District Wakf Administration Fund. The third proviso thereto provides also that the Provincial Government may make such reduction from time to time in the contribution to be made to the Wakf Administration Fund of the district or area prescribed as not ordinarily to leave any surplus in such fund at the end of any year in excess of the amount as will in the opinion of the Court be sufficient for payment of the charges and expenses referred to in section 6-K. It is apparent that this proviso is intended to empower Government to reduce contribution whenever it is considered necessary and such reduction can be made by an order which, not being an amendment to the rule, does not require any previous publication in the official Gazette.

Id./ P.M.L. 4/10

O.C. Remembrancer of Legal Affairs.

U.R. to D.C. , No. 10012, dated the 16th October 1947.

gMR 8/5/56

4 Copies.

Office of the Sole A.

ayment of Compa sionate Gratuity .....

ombay Mussalman akf Rules, 1935.

It appears that one Shaikh Osman was in the service of the Wakf Committee, Bombay. As he died recently without makin any provision for his widow Zainabbai, there is a proposal tha the widow should be given some compassionate gratuity equal to six months' pay of her deceased husband out of the Wakf Committee Administration Fund. The question raised for the consideration of the S.L.A. is whether there is any objection to the payment of the compassionate gratuity out of the Wakf Administration Fund.

Under section 6(K) of the Mussalman Wakf Act, 1923, as amended by the Mussalman Wakf (Bombay Amendment) Act, 1935, the Wakf Administration Fund of a district shall be applicable to the payment of charges for and expenses incidental to the registration, superintendence, administration and control of Wakfs, the maintenance of the Registrar of Wakfs, the scrutiny and audit of accounts of Wakf, the institution and defence of suits etc. A staff is entertained for the purpose of enabling the effective superintendence, administration and control of Wakfs to be carried on and their remuneration can be paid out of the Wakf Administration Fund. However, section 6(c), sub-section (2) specifically provides that it shall be competent to the court to employ upon such terms and conditions as may be prescribed such persons as may in the opinion of the court be necessary for carrying out the purposes of this Act and to pay them such remuneration from the Wakf Administration Fund as may be prescribed. 'Prescribed' means prescribed by rules. Rule 24 of the Bombay Mussalman Wakf Rules, 1935, empowers the Court of Small Causes to employ such persons under sub-section 2 of section 6(C) as may appear to the court to be fit for carrying out the purposes for which they are employed and to pay such travelling, daily or other allowances as the Court may decide in each particular case. And further, the Court may employ 2 clerks on a permanent basis etc. A similar provision is made under rule 24A empowering the Court other than

the Court of Small Causes, Bombay, to employ clerks. It is clear from these provisions that although the remuneration of the staff employed by the Court for the purpose of superintendence, control and administration of the wakfs can be paid out of the Wakf Administration Fund, it is necessary that some provision in the rules should be made regulating the conditions of service, payment of remuneration, to the members of such staff. There is no provision in the rules regarding the employment of Peons. Notwithstanding the absence of any express provision in the rules in respect of the payment of any gratuity to any of the servants employed by the Court, it would not be illegal to pay gratuity to the widow of the deceased peon in the present case out of the Wakf Administration Fund under section 6(K) Accordingly Government may direct such payment in the present case, and steps may be taken to make specific provision in the rules regulating the conditions of service of the persons employed under the Act for such purposes.

Id. P.M.L. 28/11/47

~~S.C.~~ Remembrancer of Legal Affairs.

U.R. to R.D. No. 11431, date the 29th November 1947.

SMR. 8/5/56

4 Copies.